IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	Chapter 13
Jewel Charlene Fuller,	Case No. 16-54128-LRC
Debtor.	

Jewel Charlene Fuller,	
Plaintiff,	Adv. Proc. No. ________
vs.	
Darnel Quick Recovery, Inc.,	
Defendant.	

COMPLAINT SEEKING DAMAGES IN ADVERSARY PROCEEDING

INTRODUCTION

This is an action for damages and equitable relief based upon the Defendant's overt and intentional unlawful conduct in the furtherance of its efforts to collect a consumer debt. The Defendant's conduct is in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.* These claims arise as a result of Defendant's overt and intentional conduct.

JURISDICTION AND VENUE

1. This is a core proceeding as defined by 28 U.S.C. § 157, and this is a matter arising in a case under Title 11.

2. This Court has proper matter jurisdiction pursuant to 28 U.S.C. § 157(b) and § 1334.

3. Jurisdiction is conferred on this Court by 15 U.S.C. § 1640(e) and 28 U.S.C. §§ 1331 and 1337. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. The Plaintiff is a debtor in the underlying Chapter 13 pending in this Court, case number 16-54128-LRC.

5. The Defendant is a corporation organized under the laws of the State of Georgia.

6. Defendant has entered the Plaintiff's Chapter 13 alleging that it is the collecting agent for debts originated by and owed to third-parties.

FACTUAL ALLEGATIONS

7. On March 3, 2016, Plaintiff's Chapter 13 proceeding was commenced by the filing of a voluntary petition with the Clerk of this Court.

8. The Plaintiff scheduled, as unsecured debts, four accounts being collected by the Defendant in the amounts of $650.00, $650.00, $480.00, and $480.00 (Doc. 1, pg 21-22).

9. The debts referenced in enumeration 8 and being collected by the Defendant

arose out of medical services provided to the Plaintiff.

10. On June 29, 2016, Defendant filed Proofs of Claim Numbers 11 and 12 in the amounts of $1,300.00 and $960.00 respectively seeking payment of the debts described herein.

11. Attached to Defendant's POCs are documents titled "Account Profile Report".

12. Each of these Account Profile Reports indicate that the medical services giving rise to the debts being collected by the Defendant were provided on October 28, 2010, and October 29, 2011, (Claim 11, Part 2; and Claim 12, part 2).

13. The Defendant markets itself as a highly-skilled organization that "specializes" in first-party billing, commercial and consumer third-party collections. See, http://www.darnelrecovery.com/about. Last visited November 8, 2016.

14. The Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

15. The Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(5) and (6)

16. The debts being collected by the Defendant are "consumer debts" as defined by 15 U.S.C. § 1692a (3) and (5).

17. The debts giving rise to Defendant's claims are governed by the 4-year statute of limitation set forth in O.C.G.A. § 9-3-25. Accordingly, they could not be collected upon by legal process any later than October 29, 2015.

18. The filing a proof of claim to collect a stale debt violates the FDCPA including Sections 1692(d), 1692(e) and 1692(f). See, *Crawford v. LVNV Funding, LLC*, 2014 U.S. App. LEXIS 13221 (11th Cir. Ala. July 10, 2014).

DAMAGES

19. As a result of Defendant's actions, Plaintiff has suffered actual damages, including time expended to confer with counsel; consumption of resources in the form of her attorney time and resources in challenging an unlawful claim; potential harm through possible payment of an unenforceable clam; and worry over the repercussions of Defendant's unlawful conduct.

FIRST CLAIM FOR RELIEF -- OBJECTION TO CLAIM

20. Plaintiff repeats and realleges paragraphs 1-18 as though fully set forth herein.

21. The Debtor objects to Defendant's proof of claim on the grounds that it is time-barred as a matter of law per the supporting documentation filed by the Defendant and is therefore objectionable under 11 U.S.C. § 502(b)(1) and should be disallowed.

COUNT I

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT (“FDCPA”)
15 U.S.C. § 1692, *et seq.* -- Proof Of Claim 11

22. Plaintiff repeats and realleges the preceding paragraphs 1-18 as though fully set forth herein.

23. Defendant's filing of its POC Number 11 was an attempt to collect a time-

barred consumer debt.

24. The Defendant has made numerous deceptive and misleading statements in its attempt to collect a consumer debt in violation of 15 U.S.C. §§ 1692e and 1692f.

25. The filing of a proof of claim to collect upon a time-barred debt is a per se violation of the FDCPA, including Sections 1692(d), 1692(e) and 1692(f). See, *Crawford,* infra.

26. The acts and omissions by Defendant constitute violations of the FDCPA including, but not limited to, collecting or attempting to collect amounts not permitted by law and by otherwise using unfair and deceptive methods in direction violation of 15 U.S.C. 1692f(1).

27. The Plaintiff has suffered actual damages as a result of Defendant's conduct as described herein.

28. As a result of Defendant's violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages in the amount of $1,000.00, costs of this action and reasonable attorney's fees as determined by the Court as mandated by 15 U.S.C. § 1692k.

COUNT II

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT ("FDCPA")
15 U.S.C. § 1692, *et seq.* --Proof of Claim 12

29. Plaintiff repeats and realleges the preceding paragraphs 1-18 as though fully

set forth herein.

30. Defendant's filing of its POC Number 12 was an attempt to collect a consumer debt.

31. The Defendant has made numerous false, deceptive and misleading statements in its attempt to collect a consumer debt in violation of 15 U.S.C. §§ 1692e and 1692f.

32. The filing of a proof of claim to collect upon a time-barred debt is a per se violation of the FDCPA, including Sections 1692(d), 1692(e) and 1692(f). See, *Crawford,* infra.

33. The acts and omissions by Defendant constitute violations of the FDCPA including, but not limited to, collecting or attempting to collect amounts not permitted by law and by otherwise using unfair and deceptive methods in direction violation of 15 U.S.C. 1692f(1).

34. The Plaintiff has suffered actual damages as a result of Defendant's conduct as described herein.

35. As a result of Defendant's violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages in the amount of $1,000.00, costs of this action and reasonable attorney's fees as determined by the Court as mandated by 15 U.S.C. § 1692k.

WHEREFORE, the Plaintiff having set forth his claims for relief against the

Defendant respectfully prays of the Court as follows:

A. That Proofs of Claim Numbers 11 and 12 be disallowed;

B. That the Court award actual damages in an amount to be shown at trial, statutory damages in the amount of $1,000.00 per violation of the Act, costs and reasonable attorney's fees as determined by the Court pursuant to 15 U.S.C. § 1692k; and

C. That the Court award reasonable attorney's fees and expenses pursuant to 15 U.S.C. § 1692k and O.G.C.A. § 10-1-399(d); and

E. That the Plaintiff have such other and further relief as the Court may deem just and proper.

This the 8th day of November, 2016.

Respectfully submitted,

*/s/ Matthew T. Berry*________
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